

RECORD OF DECISION

**EAST BAY MUNICIPAL UTILITY DISTRICT
SUPPLEMENTAL WATER SUPPLY PROJECT**

JANUARY 2001

Concur:

Date: _____

Frank Michny
Regional Environmental Officer

Approved:

Date: _____

Lester A. Snow
Regional Director

I. INTRODUCTION

This document constitutes the Record of Decision (ROD) of the Department of the Interior, Bureau of Reclamation (Reclamation), Mid-Pacific Region, for amendment of the existing 1970 water service contract (#14-06-200-5183A) between Reclamation and East Bay Municipal Utility District (EBMUD). The proposed project is the subject of the Final Environmental Impact Report/Final Environmental Impact Statement (FEIR/FEIS) EBMUD Supplemental Water Supply Project (FES00-54) dated December 15, 2000, developed in compliance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA).

II. DECISION

The decision is to implement the federal action identified as the preferred alternative in the FEIR/FEIS. The federal action identified in this ROD, and supported by the FEIR/FEIS is execution of an amendment to the 1970 contract. The amendatory contract will provide for a selection of one of the following alternative delivery sites, under the identified and other appropriate conditions:

Lower American Delivery (Alternative 4): Delivery of EBMUD's contractual supply at "Site 5" on the American River (Alternative 4) that must include the completion, prior to construction, of a satisfactory water storage strategy which will allow EBMUD to meet project purposes within the necessary flow pattern limitations. The storage strategy must include all necessary additional environmental documentation and be completed in a satisfactory manner. Additionally, the amendatory contract will include for "Site 5" specific diversion rates and schedules (e.g., Hodge flows for "Site 5"), which will be in effect for the duration of the amendatory contract, and will assure compliance with the California Wild and Scenic Rivers Act.

Sacramento River Freeport Delivery (Alternative 6): Delivery of EBMUD's contractual supply at Freeport on the Sacramento River (alternative 6), instead of an American River delivery. The Freeport delivery would be structured to allow and encourage regional water management partnerships that will consider interim water supplies to be made available by regional partners.

Folsom South Canal Delivery: The amendatory contract will prohibit deliveries of water diverted at Nimbus Dam as currently provided in Article 9(a) of the existing 1970 contract. However, if permitting and necessary agreements for another point of diversion are not completed by July 31, 2001, or as otherwise mutually agreed to, then

EBMUD will have the right to deliveries of up to 150,000 acre-feet annually, as provided in Article 9(a) of the existing 1970 contract.

The amendatory contract will provide that in order for deliveries to occur at any of the diversion sites identified above, all relevant state and federal laws and regulations must be complied with, and approval of the Contracting Officer is required. The Contracting Officer will initiate and complete consultation under Section 7 of the Endangered Species Act (ESA) and will comply with NEPA, as applicable, prior to any diversion.

III. OTHER ALTERNATIVES CONSIDERED

All of the other alternatives considered and documented in the Final EIS provide for specific points of delivery of water to EBMUD. Under each of the alternatives that follow, EBMUD would construct the facilities. Alternatives 1 through 3 was analyzed in the 1997 Draft EIS/R. Alternatives 4 through 8 were analyzed in the Recirculated EIR/Supplemental EIS.

Alternative 1: No Action

As described in Chapter 2 of the 1997 Draft EIR/EIS, this alternative assumes the proposed Supplemental Water Supply Project would not be implemented. For NEPA purposes, the federal action under review by Reclamation is an amendment of the existing EBMUD/Reclamation water service contract. The existing EBMUD/Reclamation water service contract allows EBMUD to take delivery of up to 150,000 acre-feet of water from the Folsom South Canal (FSC) pursuant to applicable state and federal laws.

Alternative 2: Folsom South Canal Delivery

Under this alternative, as described in Chapter 2 of the 1997 Draft EIR/EIS, EBMUD would take delivery of its contract water directly from the FSC subsequent to Reclamation's diversion from Lake Natoma, consistent with the Hodge Decision. Four primary pipeline alignments are described in the 1997 Draft EIR/EIS. Two pumping plants would be needed. One would be at the canal delivery point, and one would be near the Mokelumne Aqueducts in San Joaquin County.

In addition to the various permit actions typically required for such an undertaking, amendment of the EBMUD/Reclamation water service contract may be necessary for two of the alignments identified for this alternative. These are FSC Connection Alignments 2 and 3. Alignments 1 and 4 would not require an amendment of the existing water service contract. The environmental effects of delivery of water under

either the amendatory contract or the original contract are fully described in the 1997 Draft EIR/EIS.

Alternative 3: Joint Project - American River Delivery

Under this alternative, EBMUD would take delivery of its contract water at a point of diversion on the lower American River as part of a joint project with the County of Sacramento and the City of Sacramento. As described in Chapter 2 of the 1997 Draft EIR/EIS, EBMUD, the County of Sacramento, and the City of Sacramento would jointly construct and operate the diversion facility. The Joint Project includes an intake on the lower American River at one of five locations within approximately 2.5 miles of its confluence with the Sacramento River and a pipeline from the intake to a location near the City of Sacramento's Fairbairn Water Treatment Plant. A pumping plant and second pipeline would be constructed to connect to the existing FSC. A third pipeline would be constructed from the terminus of the FSC to the Mokelumne Aqueducts FSC Connection Alignment 2, and a pumping plant would be constructed near the Mokelumne Aqueducts. In addition, this alternative would rely on the expansion of the City's Fairbairn and Sacramento River Water Treatment Plants.

Alternative 4: EBMUD-Only American River Delivery

Under this alternative, EBMUD would take delivery of its contract water at a point of diversion on the lower American River as an EBMUD-only project. Alternative 4 is based on the City of Sacramento's and County of Sacramento's "Modified Proposal," dated June 8, 1999. Essentially, this project combines many of the basic facility elements of "Alternative 3, Joint Water Supply," as described in the 1997 Draft EIR/EIS, with many of the basic operational concepts of "Alternative 2, FSC Connection." Alternative 4 is EBMUD's construction of a new intake on the lower American River at the "Site 5" location described in the 1997 Draft EIR/EIS. Contract deliveries would be subject to Hodge Decision flow criteria. A new pipeline would be constructed from this new delivery point to the FSC along the alignment described in the 1997 Draft EIR/EIS. As described for Alternative 3 in the 1997 Draft EIR/EIS, Alternative 4 would also involve EBMUD's construction of a second pipeline to convey the water from the terminus of the FSC to the Mokelumne Aqueducts, represented by alignment 2 of Alternative 2, as described in the 1997 Draft EIR/EIS. The Modified Proposal also provides that the Sacramento Parties would support EBMUD banking water in groundwater basins in Sacramento and San Joaquin Counties at reasonable ratios and subject to the Sacramento Parties' review of the details of the banking program. The Final EIR/EIS therefore includes a general assessment of groundwater storage utilization at a broad programmatic level.

Alternative 5: Sacramento River Delivery

Under this alternative, EBMUD would take delivery of its contract water at a point of diversion on the Sacramento River near the City of Sacramento's water treatment plant. Alternative 5 also combines many of the basics of “Alternative 3, Joint Water Supply” as described in the 1997 Draft EIR/EIS, with elements of the basic facilities of “Alternative 2, FSC Connection.” Alternative 5 would involve EBMUD construction of a new intake on the Sacramento River immediately downstream of its confluence with the lower American River and upstream of the location of the City of Sacramento’s existing intake to the Sacramento River Water Treatment Plant. A new pipeline would be constructed from this new delivery point to the FSC along the alignment described in the 1997 Draft EIR/EIS. As described for Alternative 3 in the 1997 Draft EIR/EIS, Alternative 5 would also involve EBMUD’s construction of a second pipeline to convey the water from the terminus of the FSC to the Mokelumne Aqueducts, represented by alignment 2 of Alternative 2, as described in the 1997 Draft EIR/EIS.

Alternative 6: Freeport East Delivery

Under this alternative, EBMUD would take delivery of its contract water at a point of diversion on the Sacramento River near Freeport. Alternative 6 would involve construction of a new intake on the Sacramento River upstream of the Freeport Bridge. New pipelines would be constructed from this new delivery point to the FSC at approximately Grant Line Road and from the terminus of the FSC to the Mokelumne Aqueducts, represented by alignment 2 of Alternative 2, as described in the 1997 Draft EIR/EIS.

Alternative 7: Freeport South Delivery

Similar to alternative 6, under this alternative, EBMUD would take delivery of its contract water at a point of diversion on the Sacramento River near Freeport. Alternative 7 would involve EBMUD’s construction of a new intake on the Sacramento River upstream of the Freeport Bridge at the community of Freeport. EBMUD would construct a new pipeline from this new delivery point to the Mokelumne Aqueducts generally down the I-5 corridor to the City of Stockton.

Alternative 8: Bixler Delivery

Under this alternative, EBMUD would take delivery of its contract water at a point of diversion in the Delta. Alternative 8 would involve EBMUD’s construction of a new intake in the Sacramento-San Joaquin Delta on Indian Slough adjacent to the Mokelumne Aqueducts at the location known as Bixler. EBMUD would construct a new pipeline from this new delivery point to the Mokelumne Aqueducts, and build a

new treatment plant at or near the new delivery point, combined with a possible brine discharge line to Suisun Bay.

Environmentally Preferred Alternative:

The selected alternative, which allows selection of Alternative 4 or 6, represents the environmentally preferred alternative in that it will allow the project to proceed, provide assurances for protecting the environment, and avoid major environmental controversies associated with other alternatives.

IV. BACKGROUND

EBMUD holds a water service contract with Reclamation for delivery of up to 150,000 acre-feet annually from the FSC. EBMUD has been paying for water under a build-up schedule set forth in the 1970 contract, although only small quantities of water have ever been delivered by Reclamation. In wet and normal years, more than 95% of the needs of the EBMUD customers are met by its primary water source on the Mokelumne River. EBMUD is proposing the Supplemental Water Supply Project to take delivery of its Central Valley project (CVP) entitlement in order to decrease existing and future customer deficiencies during droughts and to enhance the reliability of the East Bay's water supply.

In 1972, the Environmental Defense Fund challenged EBMUD's contract with Reclamation in a lawsuit that was later joined by the County of Sacramento (County). The lawsuit alleged that delivery of the water from the FSC would be an "unreasonable" use of water. In June 1988, the California State Water Resources Control Board adopted findings that EBMUD's contract is a reasonable use of water. On January 2, 1990, after a lengthy trial, Alameda County Superior Court Judge Richard Hodge affirmed those contractual rights, subject to a set of specific conditions, including minimum flow requirements, intended to protect the Lower American River, known as the "Hodge Decision."

The environmental impacts of the Supplemental Water Supply Project were analyzed in the 1997 Supplemental Water Supply Project Draft Environmental Impact Report and Environmental Impact Statement (1997 Draft EIR/EIS). Public comments on this document, and on a proposed draft amendatory contract circulated by Reclamation in December 1998 discussed alternative project configurations and the impact assessment methodology used to address water resource and related aquatic biology issues. As a result, the lead agencies elected to prepare a Recirculated EIR/Supplemental EIS (REIR/SEIS) in October 2000 to supplement the information presented in the 1997 Draft EIR/EIS. Readers are referred to the 1997 Draft EIR/EIS for detailed background information on project configurations and for previously presented analyses. Complete responses to all comments on the 1997 Draft EIR/EIS and the

REIR/SEIS are presented in the Final Environmental Impact Report/Final Environmental Impact Statement (FEIR/FEIS) on the Supplemental Water Supply Project.

V. BASIS OF DECISION AND ISSUES EVALUATED

The recommended action would amend the 1970 EBMUD contract to add provisions for delivery from one of two sites identified under certain conditions. One site (Alternative 4) is on the Lower American River upstream of the I-5 bridge. The other site, (Alternative 6) is on the Sacramento River above Freeport. The recommended action represents the best option for delivery of EBMUD's CVP water entitlement while providing assurances to protect the environment. The decision to allow use of one of the two identified diversion sites, under the identified conditions, avoids major controversies associated with other alternatives regarding American River issues, and drinking water quality questions, and allows the potential resolution of many issues associated with EBMUD's diversion in a manner that addresses concerns of the major interest groups.

1) Environmental Effects

For long term impacts, Alternative 8 could impair the quality of Suisun Marsh through a brine discharge. A minor loss could also be expected to fish habitats in the American Rivers and, Folsom, Shasta and Trinity Lakes through the operation of Alternatives 2-4. Visual impacts result from diversion structures for Alternatives 3-8. Alternatives 3 and 4 would require compliance with state law protecting the recreational status of the Lower American River. Alternatives 2-8 could disturb known cultural resource sites and some land-use conflicts and agricultural loss may result along the pipeline route. Some minor changes in water-dependent recreation may occur at the American, Mokelumne, and Sacramento Rivers and at Folsom, Shasta, Trinity, Camanche, and Pardee Reservoirs by operation of Alternatives 2-8.

For short term impacts, each of the water delivery project alternatives affects environmental resources in a similar fashion at generally the same levels with varying site specific impacts depending on location. Alternatives 2-8 would potentially impact biological resources during construction of features such as pipelines and other features. These include minor loss or disturbance to riparian woodlands, special status plant and animal populations, jurisdictional waters of the United States, and short-term loss of fish habitat near intake structures. For Alternatives 2-8, short term increases in noise levels, transportation pattern, public health and safety, and some localized flooding and erosion issues would be experienced during construction.

2) Amendatory Contract

The recommended action of amending the 1970 EBMUD Water Service Contract would allow for delivery from one of two diversion sites described in Alternatives 4 and 6, subject to certain conditions. For Alternative 4, the amendatory contract will assure specific diversion rates and flow schedules that maintain appropriate in-stream flow conditions for the Lower American River. The amendatory contract will assure compliance with the California Wild and Scenic Rivers Act for any delivery facility constructed in the Lower American River.

A diversion of EBMUD's contractual supply at Freeport on the Sacramento River (Alternative 6), instead of an American River diversion, would be structured to allow and encourage regional water management partnerships that will consider interim water supplies to be made available by regional partners. As described in the FEIS, the preferred alternative will encourage a regional partnership that is consistent with the CALFED objectives of drinking water quality and water supply reliability, while avoiding significant redirected impacts.

The contract will enable EBMUD to reduce the severity and frequency of drought rationing for its customers, without substantial impacts on the environment or CVP operations. The contract will provide for EBMUD to take deliveries near Freeport on the Sacramento River (alternative 6), including dry years or at site 5 (Alternative 4) on the Lower American River if the Contracting Officer finds that EBMUD has developed an acceptable water storage component to be incorporated into the project.

The amendatory contract will prohibit deliveries of water diverted from Nimbus Dam as currently provided by the existing 1970 contract. However, if permitting and necessary agreements for another point of diversion are not completed by July 31, 2002, or as otherwise mutually agreed, EBMUD will have the right to deliveries of up to 150,000 acre-feet per year as provided for in the 1970 contract.

VI. ENVIRONMENTAL COMMITMENTS

The amendatory contract will provide that in order for diversions to occur at any of the diversion sites identified above, all relevant state and federal laws and regulations must be complied with. In particular, with the development of a Freeport diversion or with the development of a storage strategy for Alternative 4 on the Lower American River, additional environmental review may be required. Such project level analyses would tier off of all previous EIS work completed for the EBMUD Supplemental Water Supply Project. The Contracting Officer will ensure that any necessary consultation under Section 7 of the ESA, and compliance with NEPA, as applicable, has been completed prior to any diversions.

The proposed federal action does not provide for the construction of any facilities, nor for any diversion to occur at this time. Rather it provides for EBMUD to pursue alternatives for such facilities and diversions at a later date. The amendatory contract will require completion of applicable ESA consultation and applicable NEPA compliance prior to any diversion. As such, the proposed contract amendment by itself is not likely to adversely affect any listed species under the jurisdiction of the Secretary of Interior. Both the National Marine Fisheries service and the Fish and Wildlife Service have concurred in this determination. In addition, any new diversion facility would include a fish exclusionary system and would be designed to meet California Department of Fish and Game, National Marine Fishery Service, and United States Fish and Wildlife Service criteria. Such a facility would incorporate applicable mitigation measures.

Other than those discussed above, project-specific environmental commitments to avoid or minimize any impacts will be developed during project-level analyses as applicable, once a specific project is formulated.

VII. COMMENTS RECEIVED ON THE FEIR/FEIS

Following the filing of the Final REIR/SEIS in December 2000, six comment letters were received from the following parties: U.S. Environmental Protection Agency (EPA); California Department of Justice, Office of the Attorney General; Contra Costa Water District (CCWD); and Stockton East Water District (SEWD) (two letters); and the Thomas Family.

The letter from EPA, while generally supporting the efforts of EBMUD and Reclamation, expressed concerns regarding the level of detail at which the project alternatives were examined, the feasibility of other possible alternatives (such as water transfers, conjunctive use, pricing, joint projects, and diversions downstream), and consistency with CALFED and the CVP Improvement Act goals and proposed actions.

The letter from the California Attorney General's Office expressed support for a Sacramento River delivery alternative and indicated that, while issues remain, the California Department of Fish and Game and State Lands Commission do not believe that such issues are insurmountable.

The letter from CCWD provided suggestions for language to be included in the ROD. These suggestions were primarily focused on providing specific language and commitments on the part of Reclamation and EBMUD to undertake certain actions prior to implementation of any project and included numerous commitments to mitigation.

The letters from SEWD also provided suggestions for language to be included in the ROD. Primarily these suggestions were focused on including language in the ROD that would encourage the inclusion of San Joaquin County water interests in any joint project that may be developed subsequent to the REIR/SEIS. SEWD also expressed interest in participating in the development of such a project.

The letter from the Thomas Family suggested that an additional alternative be considered that would be based on conservation, regional cooperation, and ground water storage.

Reclamation has thoroughly reviewed these comments and believes that to the extent issues are raised in these comments, they were adequately addressed in the Final REIR/SEIS and related documents, including this ROD or will be adequately addressed through future planning and environmental review processes. While some of the comments suggested specific language to be included in the ROD, Reclamation has determined that it would be premature to make specific commitments regarding a potential future joint project at this time, particularly as additional engineering and environmental documentation would be required before a project could be defined and before a decision to pursue such a project could be made.